

STATEMENT OF INTRODUCTION U.S. REPRESENTATIVE EDWARD J. MARKEY (D-MA)
CONSUMER PRODUCT RISK REPORTING ACT of 2001
October 2, 2001

Mr. Speaker, I rise today to introduce the Consumer Product Risk Reporting Act of 2001, a bill intended to improve consumer safety by achieving increased compliance with existing requirements to report hazards when they are known. The legislation would increase the civil and criminal penalties that the CPSC can seek from firms that do not inform the Commission when they have sold a product that could pose a substantial hazard to consumers. The legislation would also help make some product recalls more effective.

The CPSC is the government agency that makes sure cribs, toys, and other products in your home or around schools and in recreation areas are not hazardous, and recalls them when they are hazardous. The CPSC oversees the safety of 15,000 different kinds of consumer products. Each year there are more than 29 million injuries and about 22,000 deaths associated with consumer products.

Current law provides that if companies have information that one of their products has a safety defect that could create a serious product hazard or presents an unreasonable risk of serious injury or death, they are required to report that to the government. Unfortunately, some companies are not obeying the law. The CPSC estimates that in half of the most serious cases they deal with, the company has failed to report injuries. Instead, the information comes to the attention of the agency from its own investigators, from consumers, or tragically, from hospital emergency room reports or death certificates.

When companies don't report, dangerous products that should have been recalled or modified remain on store shelves. They continue to be sold and they stay in consumers' homes where they can cause serious injury or death. Some consumers pay a very high price for a company's failure to report.

For example, a 3-year-old girl died while playing on her swing. Her grandfather was cutting weeds in the yard using a weed trimmer with a replacement head that was made with metal links. The end link broke off and it flew through the air as a piece of deadly shrapnel travelling 240 miles an hour. It hit his granddaughter in the temple, penetrated her skull and killed her. The company didn't tell the CPSC about this death, nor did they tell the CPSC about the 40 other serious injuries from chains breaking. The CPSC was forced to do its own investigation and recalled the product nationwide in May 2000.

Such failures to report can result in tragic losses of life and limb that are avoidable and preventable if compliance with reporting were higher.

Under current law, the CPSC can fine companies for violating the law, but the amount of the fine is limited by statute to a level that does not sufficiently deter violations. Under current law, companies can face criminal penalties for violating consumer product safety laws, but they are only misdemeanors. Under current law, in any recall, companies elect whether to provide a repair, replacement or refund for defective products. In most cases, the CPSC can find a good solution to the problem for consumers. But in other cases, especially where the product is older and has been on the market for many years, companies argue they can elect a refund that may not result in an adequate recall thus resulting in the dangerous product remaining with consumers.

To remedy these deficiencies, the legislation would:

Eliminate the cap on civil penalties for violations of product safety laws. Eliminate the cap on civil penalties for violations of product safety laws. Under current law, the CPSC cannot assess more than

\$1,650,000 for a related series of violations against a company that knowingly violates consumer product safety laws. The legislation would eliminate this maximum civil penalty. Many of the cases in which the Commission seeks civil penalties involve very large corporations that can easily absorb a \$1.65 million fine. For them, it is a cost of doing business. More substantial civil penalties would provide a needed incentive for those and other companies to notify CPSC of dangerous products so that the agency can take timely action to protect consumers. Other agencies, including the Federal Trade Commission, enforce laws with no "cap" on the amount of the penalty.

Increase the penalty for a "knowing and willful" criminal violation of product safety laws from a misdemeanor to a felony and eliminate the requirement that the agency give notice to the company that is criminally violating the law. The legislation would increase the potential criminal penalties for a "knowing and willful" violation of consumer product safety laws from a misdemeanor (up to one year in prison) to a felony (up to three years in prison). It would also increase the maximum monetary criminal penalty in accordance with existing criminal laws. These heightened penalties are commensurate with the seriousness of product safety violations, which can result in death or serious injury to children and families. Other agencies have authority to seek substantial (felony) criminal penalties for knowing and willful violations of safety requirements, including the Food and Drug Administration for prescription drug marketing violations and the Department of Transportation for the transportation of hazardous materials.

The legislation would also eliminate the requirement under the Consumer Product Safety Act that the Commission give notice of noncompliance before seeking a criminal penalty for a willful violation of the Act. The notice requirement makes it all but impossible to pursue a criminal penalty for violations of the Act, even in the most serious cases. The threat of a criminal felony prosecution would create an additional strong incentive for companies to report product defects to the Commission.

Give CPSC clear authority to overrule the remedy chosen by a manufacturer to address a defective product in a product recall when the Commission determines that an alternative remedy would be in the public interest. Under current law, a company with a defective product that is being recalled can elect the remedy to be offered to the public. The company can choose repair, replacement, or refund "less a reasonable allowance for use."

The legislation would continue to permit the company to select the remedy in a product recall. However, the legislation would allow the Commission to determine (after an opportunity for a hearing) that the remedy selected by the company is not in the public interest. The Commission may then order the company to carry out an alternative program that is in the public interest.

Sometimes companies try to choose a remedy in a recall that does not further public safety. For example, a manufacturer may argue it can choose to refund the purchase price of a product, less a reasonable allowance for use even though the product has been on the market for a long time and the amount due consumers may be so insignificant that there is no incentive for the consumer to take advantage of the recall. This is especially true where the hazardous product is still useful to the consumer and the cost of replacement for the consumer is substantial. Companies may try to choose an insubstantial refund even though people have been at risk for a number of years, thousands of products are still in use, injuries are continuing to occur and a repair is available and feasible. In this example, a refund is no remedy at all, and offering a minimal refund would not serve the public interest.

Thank you.